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Viewing cable 08SANJOSE959, COSTA RICA: JANUARY 1 CAFTA EIF WITHIN REACH

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- The middle box contains the header information that is associated with the cable. It includes information about the receiver(s) as well as a general subject.
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Reference ID	Created	Released	Classification	Origin
08SANJOSE959	2008-12-10 14:01	2011-08-30 01:44	CONFIDENTIAL	Embassy San Jose

Appears in these articles:

<http://www.nacion.com/2011-03-02/Investigacion.aspx>

VZCZCXYZ0004
OO RUEHWEB

DE RUEHSJ #0959/01 3451401
ZNY CCCCC ZZH
O 101401Z DEC 08
FM AMEMBASSY SAN JOSE
TO RUEHC/SECSTATE WASHDC IMMEDIATE 0339
INFO RUEHZA/WHA CENTRAL AMERICAN COLLECTIVE IMMEDIATE
RHEHNSC/NSC WASHDC IMMEDIATE

C O N F I D E N T I A L SAN JOSE 000959

SIPDIS

DEPT FOR WHA, WHA/CEN, WHA/EPSC AND EEB; DEPT PLEASE PASS
TO USTR AMALITO AND DOLIVER; DEPT PLEASE PASS TO TREAS
SSENICH

E.O. 12958: DECL: 12/09/2018
TAGS: [CS](#) [ECON](#) [ETRD](#) [KIPR](#) [PGOV](#) [PREL](#)
SUBJECT: COSTA RICA: JANUARY 1 CAFTA EIF WITHIN REACH

REF: A. SAN JOSE 823
[1](#)B. SAN JOSE 958

Classified By: DCM Peter Brennan per 1.4(d)

¶1. (SBU) The GOCR accepted USTR's requirement to pass one more legislative bill on three IPR-related technical corrections which must be enacted for full CAFTA implementation. The GOCR probably will introduce this 14th CAFTA bill before the December 19-January 5 recess, but not take action on it until January. The GOCR understandably seeks to minimize the public and political attention drawn to the bill, to treat it as a routine revision of already-enacted legislation, and to separate it as much as possible from actual CAFTA entry-into-force (EIF) on January 1. No matter when it launches, however, this last CAFTA bill, like the other 13, may not move quickly: the Asamblea's agenda is full and the 38-seat pro-CAFTA coalition is virtually spent. (A 38-vote super-majority will be needed to invoke fast track authority and keep the new bill moving. Otherwise, opponents may pile on motions to block it and delay full implementation.) Costa Rica is thus likely to reach CAFTA EIF on January 1 with some work not quite finished, in exchange for a holdback of some trade preferences (likely candidate: organic sugar). This scenario concerns the Ministry of Foreign Trade (COMEX), because the selection of a holdback could affect pro-CAFTA economic or agricultural sectors. In addition, a partial, provisional, or technical EIF might be vulnerable to a constitutional challenge. Minister of the Presidency Rodrigo Arias may make one more plea against a holdback when he meets with USG officials on the margins of the Pathways to Prosperity Summit in Panama on December 10. With the leading opposition figure traveling the region calling for CAFTA renegotiation, and the incoming US administration and Congress likely to hold a different view than their predecessors on free trade, the GOCR knows it must (finally) close the door on CAFTA. The question is how best to do so. END SUMMARY.

THE FINAL Bill

¶2. (SBU) The status of the four technical issues has evolved over the last two months (Ref A). COMEX now agrees with USTR that three should be included in legislation. The fourth has already been corrected in legislation:

IP Enforcement) requires the addition of a phrase to qualify the type of phonographic recordings involved in an IP violation. COMEX agrees this legislative change must be made, given the glaring nature of its omission. COMEX also believes this should fix be amenable to a sufficient number of legislators, if the new bill is presented in the right way at the right time. This fix would correct an omission in the IPR enforcement bill (No. 16.117) which became law in August.

Publication of Recordings - requires the substitution of text which will re-insert a sentence that was deleted from bill No 16.955 (the IPR catch-all which became law in November) and replaced by a reference to the Rome Convention. After USTR and COMEX debated how best to achieve the desired result, the parties agreed that a legislative solution was acceptable.

Data Protection) requires the addition of a word to qualify the type of products subject to data protection, also in bill No. 16.955. The additional word specifies the type of new pharmaceutical product that will have data protection. COMEX hoped that it could incorporate this correction into an agro-chemical bill under debate in the national assembly, but the deal to do so fell through at the last minute.

Establishment of IP Rights) required the deletion of the Spanish word for previously from a section of bill No. 16.955 for two reasons: to eliminate a time threshold for the establishment of rights and to make the text of the relevant article consistent. COMEX successfully (and rather skillfully) made this change before bill No. 16.955 was approved by the legislature on November 11 by indirect means; using linguists to correct the legislative language.

This avoided drawing attention to the change.

LEGISLATIVE STRATEGY

13. (SBU) COMEX initially recommended to Casa Presidencial to proceed forward with a &clean-up8 bill immediately and not wait until December 1 (which is when the GOCR controls the legislative agenda). That did not happen. However, with the text of the bill now under discussion with USTR, COMEX Minister Marco Vincio Ruiz shared with us that the bill could be introduced as early as the week of December 8. Regardless of timetables, COMEX does not foresee super-majority (38 votes) support for the bill even with executive control of the legislative agenda in the December-April session. Given the political exhaustion of the fragile, pro-CAFTA coalition, the GOCR cannot count on the 38 votes for fast track authority. Without fast track authority, there is no mechanism for cloture or to limit debate. Without such a mechanism, debate on the final CAFTA bill could drag on for weeks, as took place frequently during the debate over other items of implementation legislation. If the new bill is handled carefully, however, COMEX is reasonably confident it could be approved &within 90 days,8 according to Minister Ruiz. Approval in the new year should gain added political impetus from CAFTA having already entered into force.

14. (SBU) Since the &clean-up8 bill has yet to appear on the legislative docket, the media (and most political leaders and legislators) are unaware of this lingering CAFTA business. Leading daily La Nacion quoted Minister Ruiz on 2 December as saying CAFTA will enter into force on January 1 and the only remaining action is for the publication of regulations. Hence, the expected media storm questioning the credibility of COMEX (for not making these corrections sooner) and attacking the USG (for levying &last second demands8) has yet to occur. The GOCR apparently will forestall the anticipated media storm by delaying as long as possible the introduction of the bill -- ideally, from the GOCR,s point of view) as close to the holiday recess as possible.

15. (C) PUSC party faction chief (and pro-CAFTA stalwart) Lorena Vasquez, one of the few legislators aware of the 14th law gambit, agrees it should be handled as carefully and as low key as possible. She prefers that the new law be &dropped in8 to the agenda during the holiday recess (which is technically possible), or better, not launched until after January 1 to maximize the separation from EIF. Vasquez believes that the new law can be sold as simply completing Costa Rica,s compliance with CAFTA obligations, and also with standing WTO and TRIPS requirements. The more the new law can be defended as not asking more of Costa Rica than of any other CAFTA partner, the better. Vasquez noted that the new bill could be approved by a simply majority (29 votes), but she acknowledged that amassing the 38 votes required for fast track would be difficult.

FAST FORWARD TO JANUARY 1

16. (SBU) COMEX Director Gabriela Castro outlined to Econoff COMEX,s strategy for convincing legislators of the need to pass the bill. She explained why the GOCR finalized regulations now for the &clean-up8 bill even before introducing it. This would allow the GOCR:

-- to claim (correctly) that the last bill meets the full provisions of CAFTA; and

-- to urge skeptical legislators that a signed CAFTA treaty with regulations but no corresponding law is legally incomplete.

17. (SBU) Quick to point out, &this is not a way to avoid passing the last bill,8 Castro stressed, &we are committed to that.8 Although primarily intended to result in an agreed EIF on January 1, this @ulations first8 strategy

is also to protect the GOCR, specifically COMEX, since anything technically short of full EIF could be challenged as unconstitutional under Costa Rican law, possibly holding the responsible officials (Minister Ruiz and his team) criminally liable. Although the legal vulnerabilities of this scenario are unclear (and are under examination by COMEX lawyers) COMEX is eager to pursue a strategy to minimize constitutional or criminal exposure.

A SWEET BUT SOUR HOLDBACK

¶8. (C) We understand that USTR and COMEX are discussing holdbacks, principally focused on sugar, but there is no final agreement on this issue yet. Minister Ruiz told the Ambassador last month that USTR has been referring to the example of El Salvador as a possible model for EIF with a holdback. USTR chose sugar in that case but COMEX believes the situation is much different in Costa Rica (with a collection of smaller, cooperative sugar producers) than in El Salvador (where the industry is dominated by three producers). Choosing sugar as the holdback in Costa Rica would affect the entire LAICA cooperative, according to COMEX, which poses two challenges. First, the holdback would be seen as penalizing the small and medium businesses that comprise LAICA and actively supported CAFTA, as LAICA itself did. Second, the GOCR's efforts to scramble and pass a clean-up bill which was holding up TRQs for sugar might be seen as simply helping the Arias brothers (whose family has interests in the sugar industry). An elegant sidestep would be to select organic sugar which is subject to relatively more friendly TRQs, and which involves a very limited number of growers in Costa Rica. The GOCR may make one more push against a holdback on any kind, however. In a late-breaking development (Ref B), Minister Rodrigo Arias decided to attend the Pathways to Prosperity Summit in Panama on December 10 in order to discuss the final CAFTA EIF issues with DUSTR Veroneau and perhaps with the Secretary.

NEXT STEPS?

¶9. (C) The following is our understanding of the current state of play on EIF elements:

-- AGREEMENT LETTER/HOLD BACK: COMEX and Casa Presidencial are reviewing USTR's agreement letter proposal which would permit an EIF on January 1, but with a specified holdback if the 14th law has not been completed;

-- LAST LAW: The law itself should be introduced before the Asamblea goes to recess on December 19;

-- MEDIA POINTS: COMEX and the Embassy will work together on a media strategy to handle inquiries generated by the introduction of the last bill; and

-- REGULATIONS: COMEX has effectively finished its work on IP and telecommunications regulations which will be published by December 8, just prior to USTR's deadline of December 10.

However, a subset of biodiversity regulations (related to how CAFTA-related changes in the existing biodiversity law could affect indigenous communities) must wait for the public comment period to end on December 10. After that, COMEX has from December 10 to December 15 (USTR's deadline on this issue) to obtain Ministerial approvals, the President's approval, and officially publish the biodiversity regulations.

COMMENT

¶10. (C) COMEX has managed to pull the outstanding CAFTA elements together and is focused on finishing. A key aspect of the political theater is how and when the last bill is introduced. By delaying this far (the need to introduce legislation has been known since October), the GOCR seems to

be counting on the end-year Asamblea recess and national holidays to mute media coverage and public reaction to this last &CAFTA problem.⁸ COMEX needs to end the CAFTA saga due to &battle-fatigue⁸ on multiple fronts: with the national assembly, within the GOCR, and with USTR. COMEX will have little time to rest, however, as January 2009 ushers in a busy month with the GOCR undertaking formal FTA negotiations with China, participating in a preliminary EU meeting with its Central American partners, and taking part in the sixth round of CenAm-EU trade negotiations in Brussels.

CIANCHETTE